

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Progeny LMS, LLC (“Progeny”))	DA 11-446
Waiver Request filed March 8, 2011)	WT Docket No 11-49

To: Office of the Secretary
Attn: Chief, Wireless Telecommunications Bureau

Comments in Opposition
Errata copy*

Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC are M-LMS licensees, and with entities (the undersigned, **together** “Petitioners”) are engaged in development of M-LMS licenses for purposes described in the M-LMS NRPM docket 06-49 0.¹ The subject waiver request proceeding and decision will affect Petitioners. For reasons given below, they submit this filing (the “Comments”).

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* **Additions in dark red and deletions in strikeout.**

¹ Skybridge is a nonprofit operating foundation under IRC §501(c)(3) and holds 2 MHz of the M-LMS A-block licenses assigned to it by outright charitable donations by Telesaurus Holdings GB LLC of all of its M-LMS licenses. The rest of the Telesaurus M-LMS A block spectrum is committed to Skybridge also for its nonprofit ITS purposes, under a new LLC Asset Series, subject to FCC approval of the process to be employed for this effective transfer of control. This has been discussed with attorneys in the FCC Wireless Bureau. This will enable Skybridge to use all of the A-block for nonprofit ITS wireless services. Petitioners assert in the M-LMS docket that critical core ITS location and communication services, like GPS, *cannot be effective on a for-profit basis. They must be open and at no cost like GPS.* The FCC, in its Orders creating M-LMS decided to allow for-profit services, but that was based on an economic rationale that the profit would subsidize the needed critical ITS services—and not since M-LMS is or should be another commercial wireless service. M-LMS is an ITS radio service, and is not a CMRS service.

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Summary

The descriptive section titles ~~s~~ & above give an effective summary of this pleading.

1. Timing and Other Procedural Matters and Reference and Incorporation

Petitioners, other parties that did comment or that may have commented had they been provided~~ing~~ sufficient time, and the public interest, are seriously prejudiced by the extremely short pleading cycle the FCC established in Public Notice DA 11-446, and by this Public Notice not being placed in the M-LMS NPRM docket 06-49, for reasons Petitioners explained in their request submitted in this docket 11-446 (the “Docket”) at the start of today, 3.23.11 (the “Timing and Procedures Request”). In addition, Petitioners are prejudiced by the subject Progeny Waiver request (the “Waiver Request, or “Request”) being an impermissible written ex parte presentation in the two restricted proceeding matters identified in said Timing and Procedures Request. Accordingly, Petitioners do not waive right to challenge a decision upon the Waiver Request on these matters of prejudicial procedure.

In this regard, after closing today, the FCC staff notified Petitioners directly that the FCC had acted upon the Timing and Procedures Request and to look in the Docket for that decision. Petitioners had checked the Docket during the day to look for a decision, but neither before or after said FCC notification, was the decision placed in the Docket. The FCC eventually, after close of business, notified Petitioners to find the decision at a Internet link (not in the Docket):

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-559A1.pdf²

Petitioners reference and incorporate herein their Timing and Procedures Request text that pertains to the below captioned topics of this filing.³

² This Public Notice indicated that Petitoiners stated they would file Comments today in context suggesting that denial of their request to extend the comment period did not pejude them. However, this indication was taken out of context, and not ~~in~~ the full sentence cited.

³ Reference and incorporation of factual and other material is common and permitted in FCC proceedings (as in other agency proceedings, and court proceedings) if the referenced material is relevant and readily available. E.g., see *Entercom Portland License, LLC, DA 08-495*, Rel. March 4, 2008, *In the Matter of Communications TeleSystems International Application...*

1.b. NTIA: Failure to Notify, Calls for Re-Setting the Pleading Cycle

The Federal government, via DOC- NTIA has shared use of all of the M-LMS and N-LMS spectrum, and in large part, priority use. Thus, when the FCC undertook to allocate spectrum for LMS and formulate the current rules, it notified NTIA and NTIA participated as it elected from time to time. Petitioners have many times met with NITA Office of Spectrum Management (“OSM”) concerning LMS spectrum and licenses, and the required ITS radio services using them. NTIA asserted properly its spectrum rights, and also the DOC- NTIA interest in seeing ITS radio services succeed, to benefit the clearly required ITS in the nation.

Progeny failed and the FCC to date failed to notify NTIA OSM of the Progeny Waiver Request. Conceivably, some M-LMS rule waiver requests could not affect the Federal Governments spectrum rights and existing systems using the spectrum, but clearly the subject Waiver Request could. It is clear that where NTIA agreed (or did not object to) the current final M-LMS rules (while maintaining its right to assert its spectrum rights uses and priorities), that was based upon the FCC’s proposed rules and final rules, and not a blank check for the FCC or any LMS licensee to change the playing field at any time without notice to NTIA and allowing it to consider objections and raise them if it sees fit. Rule changes, or waivers, change the playing field.

Petitioners are pursuing M-LMS primarily for nonprofit public interest wireless, focused on ITS. See the Exhibit hereto and Petitioners statements in docket 06-49 since, as they explain, this is the only way they will be widely and effectively adopted. This is in direct support of calls by the Federal government for these services, including DOC, DOT, and the US PNT (Position, Navigation and Timing) Office (representing DOT, DHS, DOD and other agencies). Petitioners thus have a direct interest, which is the same as their public interest foundation, to see that LMS rules and systems are not pursued contrary to the rights and interests of these Federal agencies

MO&O, DA 96-2183, 11 FCC Rcd 17471; 1996 FCC LEXIS 7206, Rel. Dec. 31, 1996.

that are critical for US transportation, navigation, safety, and GPS and related (M-LMS properly implemented can and should provide High Accuracy Location augmentation and backup to GPS: See Petitioners filings on this topic in 2010 and 2011 in docket 06-49).

As argued in Petitioners' Timing and Procedures Request, the Progeny Waiver Request seeks defectively unclear, but major changes in M-LMS rules, which require notice to NTIA and sufficient opportunity for that agency to poll (if it find that useful) its client Federal agencies who use 902-948 928 MHz, to determine an appropriate response in this Docket.

For these reasons (alone, and combined with those in Petitioners Timing and Procedures Request) this Docket should be re-set, a new Public Notice issued that is served on NTIA OSM, and also placed ~~d~~ s in docket 06-49, with ample time for comments (at least 30 days) and rely comments (at least 15 further days).

2. Background

2.1

M-LMS Background and Need, and in this Shared Band, Candor and Clarity is Required

Petitioners refer to and incorporate herein all of their filing in the M-LMS NPRM Docket 60-49 with regard to discussion of this section 2.1 topic. In sum, this is a shared band. This, and FCC specific rules on M-LMS, and many passages in the M-LMS rule making Orders establishing the current rules and allocating M-LMS spectrum for ITS, make clear that M-LMS licensees, and other sharing the band, **must be candid as the basis of cooperation.**

The Progeny Waiver Request is a model of lack of candor. Or, Progeny has no real **substantive** plan behind its Waiver Request. In any case, in this shared band, the only way that the licensed and unlicensed, and FCC regulated and NTIA regulated, spectrum users can efficiently and properly shared use in the public interest is to be fully candid about their technology, systems, services, and their proposals for any rule changes or waivers. There is no way to tell what Progeny really plans if its Waiver Request is granted. As indicated below, it

must thus be deemed a Trojan Horse offer / request. For example, Progeny may use a token signal on small amount of spectrum just to put into place the one-way multilateration service it proposes, but then use the rest of the spectrum for common personal wireless two-way services, in the midst (in time and space) of the highest Part 15 use by utilities and other critical infrastructure entities.

Petitioners described in docket 06-49 many times why the current rules that require service primarily to vehicles for ITS results in a natural major separation of time and space between the M-LMS systems use of spectrum, and Part 15 device systems use. That is easy to see, and was explained as well by Petitioners.

Progeny, on the other hand, is consistently vague in all its substantive proposals ever since it commenced RM-10403 in year 2003.⁴ Progeny is majority controlled by parties well known in the wireless world for commercial wireless that is based upon very large numbers of handheld devices carried in all locations. That is contrary to M-LMS ITS as the FCC properly decided: that was the sole reason and justification of allocating the substantial amount of M-LMS spectrum for ITS and for auctions. The FCC specifically rejected just what Progeny now proposes, and certainly what Progeny could do if the Waiver Request is granted: the request does not state all that Progeny would do under a granted request, but just what is the minimum it would do to meet the construction requirement to keep the spectrum, which would then allow it to use the rest of the spectrum for something other than for what it proposes in the Waiver Request.

⁴ Rather, it was always spuriously clear that M-LMS had failed and would continue to fail since GPS and commercial wireless “obviated” its need. That was entirely wrong as any half educated and half honest person in the location and wireless fields new, and Petitioners demonstrated that in detail in dockets RM-10403 and then 06-49. Now, Progeny has done a 180 degree about face and suggests to the FCC that there is a great national need to do exactly what it told the FCC for the last eight years was not at all needed, and as if Progeny just discovered this for the nation.

2.2
M-LMS Was Allocated for ITS,
which is a PMRS Safety-Oriented Service
that Must Be Primarily Open and at No Cost

This topic is discussed above, **and** in Petitioners' filings in docket 06-49 especially with regard to C-HALO, and in the Exhibits hereto. Additionally, see Petitioners (Skybridge's) papers posted at this online publishing source: www.scribd.com/warren_havens/shelf

3. Progeny LMS LLC

3.1
The Progeny Licenses are Invalid and Pending Proceedings,
and Progeny Acts Unlawfully Post Licensing

The Waiver Request is defective for reasons given (specific facts in documented evidence, and specific applicable law) by Petitioners previously: see the citations to these in Petitioners Timing and Procedures Request: the two pending challenges of Petitioners. Under the principal of abstention, at least, the FCC should dismiss the Waiver Request until those two challenges are decided upon. *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). In addition, it is clear that any favorable decision on the Waiver Request would likely be subject to petitions for reconsideration at least on this basis (**absent said abstention**).

3.2
Progeny Lacks Credibility

See other sections herein. Progeny commenced/ caused dockets RM 10403 and 06-49 on false assertions that GPS and commercial wireless effectively obviated the need for M-LSM (location and monitoring wireless) for ITS. Progeny never supported that, since it was unsupportable. Petitioners demonstrated that was spurious. Progeny now asserts just about the opposite (see above discussion). Progeny lacks credibility in this Waiver Request. Unless and until Progeny lays out **a** clear **a** plan, technology, system design, testing plan regarding Part 15 and federal device systems, need showing as to how rule **waivers** or changes are more in public

interest than no changes, etc., its current and further requests should be summarily rejected.

4. The Waiver Request (“WR”)

4.1

The WR is a Trojan Horse: Notable for What it Hides

For reasons noted herein, Progeny, which is owned by wireless experts and served by very experienced FCC-practice counsel, has submitted a Trojan Horse Waiver Request and that should be rejected for lack of candor and lack of demonstrated elements to satisfy any waiver standard under §1.925. As an example of elements required (which the Progeny Waiver Request does not meet) the FCC recently listed the following in DA 11-322, Released: February 18, 2011 (emphasis added)

Specifically, Amtrak seeks a waiver of Sections 80.92(a), 80.102(a), 80.105, 80.106, 80.123, 80.205, 80.207, 80.215(e)(2), 80.215(h)(5), 80.215(i), 80.385(a)(2), 80.475(c) and 80.479(c) of the Commission’s Rules, 47 C.F.R. §§ 80.105, 80.106, 80.123, 80.205, 80.207, 80.371, 80.215(e)(2), 80.215(h)(5), 80.215(i), 80.385(a)(2), 80.475(c) and 80.479(c) to the extent applicable, in order to permit use of the frequencies for exclusive-use private land mobile radio (PLMR) communications. We note that the Commission has offered guidance to prospective waiver applicants regarding some of the factors to be considered in evaluating requests for waivers of the Part 80 rules by entities proposing to use AMTS spectrum for land mobile communications. *See* MariTEL, Inc. and Mobex Network Services, LLC, *Report and Order*, WT Docket No. 04-257, 22 FCC Rcd 8971, 8986 ¶ 26 (2007), *aff’d*, 25 FCC Rcd 533 (2010), *recon. pending*. Specifically, the Commission requires that waiver applicants provide an explanation of the following: (a) whether the applicant will provide priority to maritime communications, (b) the distance of a proposed land mobile radio operation from the nearest navigable waterways, (c) the magnitude of divergence sought from specific Part 80 technical requirements, (d) a showing that alternative spectrum that could accommodate the proposed PLMR or other land mobile radio service is unavailable or unsuitable for that purpose, and (d) whether grant of the waiver would benefit public safety or homeland security.

AMTS is a transportation radio service, the only one set up **specifically** for wide-area wireless to major waterways. M-LMS is **the only service specifically** for wide area wireless to land transportation. The above criteria are **thus** a useful measure with regard to M-LMS. The Progeny Waiver Request does not approach meeting these: the principles involved as translated

to M-LMS ITS.

4.2
Progeny Has Waived any Right to Seek Expedited Action,
and Said Action is Not In the Public Interest.

The reason for this is explained in the Timing and Procedures Request.

4.3
The WR Is Defective Due to Self-Contradictions

The reason for this is explained above: the about-face of Progeny in this Waiver Request vs. its still-maintained position in docket 06-49. Also see below, including item 4.5 and 4.7.

4.4
The WR Cannot Be Granted With Regard to Rules in Limbo

See above and the Timing and Procedures Request.

4.5
Proposed One-Way M-LMS is Ineffective and Not in the Public Interest

ITS radio service by its nature must include two-way communications. The FCC described this clearly in the rule making Orders leading to the current rules. It explained that, unlike GPS, M-LMS can provide two-way links from the ITS network to vehicles. Unless the vehicles send their location determinations to the network (where the location is, as Progeny proposes by one-way broadcast multilateration, **determined at the vehicles**) and unless the network sends back location-bases instructions and information, there simply cannot be any ITS functions.

4.6
The WR Lacks Required Substance

As discussed herein, including the incorporated Timing and Procedures Request, the Progeny Request does not have nearly sufficient technical descriptions, and other descriptions to allow any analysis **or grant** under waiver standards. This includes **h**ow much spectrum it

would use in amount, time and space for its proposed ~~s~~ systems and services under the waived rules.

4.7

The WR Seeks Waiver of Core Part 90, Subpart M, ITS Service to Vehicles,
which Must Be Denied.
Implementing Indoor Services and Not Service To Vehicles Ruins M-LMS for ITS,
and Will Cause a Conflict with Part 15 Devices ~~Systems~~
Otherwise Properly Balanced and Solved

This is indicated above. It will be further commented ~~upon~~ later by Petitioners.

4.8

The WR Entirely Fails the Tests under §1.925

This is shown above. It will be further discussed later by Petitioners.

[Execution on next page.]

Respectfully submitted,

Skybridge Spectrum Foundation, by
[*\[Filed electronically. Signature on file.\]*](#)
Warren Havens, President

Telesaurus Holdings GB LLC, by
[*\[Filed electronically. Signature on file.\]*](#)
Warren Havens, President

Environmental LLC (formerly known as AMTS Consortium LLC), by
[*\[Filed electronically. Signature on file.\]*](#)
Warren Havens, President

Verde Systems LLC (formerly known as Telesaurus VPC LLC), by
[*\[Filed electronically. Signature on file.\]*](#)
Warren Havens, President

Intelligent Transportation & Monitoring Wireless LLC, by
[*\[Filed electronically. Signature on file.\]*](#)
Warren Havens, President

V2G LLC, by
[*\[Filed electronically. Signature on file.\]*](#)
Warren Havens, President

Warren Havens, an Individual
[*\[Filed electronically. Signature on file.\]*](#)
Warren Havens

Each Petitioner:

2509 Stuart Street
Berkeley, CA 94705
Phone: 510-841-2220`
Fax: 510-740-3412

Start of
March 25, 2011

(Errata copy filed on EFCS on March 26, 2011, Saturday, Eastern time.)